

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 * * *

5 STEVEN FLOYD VOSS,

6 Petitioner,

7 v.

8 ISIDRO BACA, et al.,

9 Respondents.

Case No. 3:18-cv-00057-HDM-VPC

ORDER

10 This closed *pro se* habeas petition comes before the court on
11 petitioner's motion for rehearing and reconsideration of the order
12 denying motion for relief from judgment pursuant to Fed. R. Civ.
13 P. 60(b), or, in the alternative, for issuance of a certificate of
14 appealability. (ECF Nos. 11 & 12).

15 Petitioner initiated this action pursuant to 28 U.S.C. § 2241
16 alleging that he was being unlawfully restrained in connection
17 with Second Judicial District Court Case No. CR96P1581. (See ECF
18 No. 1 at 19). In his petition, petitioner argued that his detention
19 was unlawful because the judgment of conviction in CR95P1581 was
20 void and invalid due to the fact he had never been resentenced
21 despite a state court ruling in postconviction proceedings that
22 petitioner was entitled to a new sentencing hearing. This court
23 concluded that petitioner had not shown the judgment of conviction
24 in CR96P1581 was void, and thus as he was in custody pursuant to
25 a state court judgment of conviction and had previously challenged
26 the judgment of conviction in CR96P1581 in a federal case decided
27 on the merits, the petition was second or successive and therefore
28 required to be dismissed. (ECF No. 4).

1 Following the court's decision, the petitioner obtained
2 relief from the Nevada Court of Appeals, which found there was no
3 valid judgment of conviction in CR96P1581 and therefore ordered
4 the state court to resentence petitioner. Petitioner moved this
5 court for relief from judgment pursuant to Federal Rule of Civil
6 Procedure 60(b) because the state courts had recognized there was
7 no valid judgment of conviction in CR96P1581. The court denied
8 petitioner's motion for relief, reasoning: (1) that because
9 petitioner is currently serving a sentence of life without the
10 possibility of parole in another criminal case, he is not being
11 unlawfully detained; (2) that even if petitioner could assert a
12 claim based on the delay in his resentencing in CR96P1581, he would
13 have to show prejudice and that he could not do so; and (3) because
14 petitioner was actively litigating in the state courts whether
15 they had the authority to resentence him and the court would
16 abstain from interfering in those ongoing state court proceedings
17 pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). (ECF No. 10).

18 Petitioner has now moved for reconsideration or, in the
19 alternative, for the grant of a certificate of appealability. For
20 the reasons that follow, petitioner's motions will be denied.

21 "A party seeking reconsideration . . . must state with
22 particularity the points of law or fact that the court has
23 overlooked or misunderstood. Changes in legal or factual
24 circumstances that may entitle the movant to relief also must be
25 stated with particularity." L.R. 59-1. Absent highly unusual
26 circumstances, the court should grant a motion for reconsideration
27 only where: (1) it is presented with newly discovered evidence;
28 (2) it has committed clear error or the initial decision was

1 manifestly unjust; or (3) there has been an intervening change in
2 controlling law. *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir.
3 2004); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890
4 (9th Cir. 2000); *Sch. Dist. No. 1J, Multnomah County, Or. v.*
5 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "[M]otions for
6 reconsideration are not the proper vehicles for rehashing old
7 arguments and are not intended to give an unhappy litigant one
8 additional chance to sway the judge." *Sw. Circle Group, Inv. v.*
9 *Perini Bldg. Co.*, 2010 WL 4606999, at *1 (D. Nev. Nov. 5, 2010)
10 (internal citations and punctuation omitted). Accordingly, a
11 motion for reconsideration is properly denied where it presents no
12 new arguments. See *Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th
13 Cir. 1985). At the same time, a motion for reconsideration "may
14 not be used to raise arguments or present evidence for the first
15 time when they could reasonably have been raised earlier in the
16 litigation." *Kona*, 229 F.3d at 890.

17 Petitioner argues that the court's order denying his Rule
18 60(b) motion for relief overlooked or misapprehended several
19 facts.

20 First, petitioner asserts that the state court no longer has
21 jurisdiction to sentence him since he has expired all the sentences
22 imposed in the original judgment of conviction entered in CR96-
23 1581. The court does not agree that the state courts lack
24 jurisdiction to resentence him on this basis or that such would
25 result in Double Jeopardy violation.

26 Second, petitioner argues that he is in custody as a pretrial
27 detainee in CR96P1581. The court has already considered and
28

1 addressed this argument in its prior order and will not revisit
2 the matter.

3 Third, petitioner asserts that the court need not abstain
4 pursuant to *Younger* because there are extraordinary circumstances,
5 namely the state court lacks jurisdiction to resentence him and
6 his speedy trial rights have been violated. As previously noted,
7 the court disagrees that the state courts lack jurisdiction to
8 resentence petitioner. The court also disagrees that the facts of
9 the petition could establish a speedy trial violation.

10 Fourth, petitioner argues the court need not abstain because
11 the state courts had already decided that they have the
12 jurisdiction to resentence him. However, the state court records
13 clearly reflect that this matter was still being litigated at the
14 time the court entered its order denying Rule 60(b) relief and is
15 still being litigated as of this date. See
16 <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=54565>
17 (last accessed July 17, 2019) (motion for rehearing pending).

18 Fifth, petitioner asserts that if this action is dismissed,
19 he will be without a remedy to challenge his judgment of conviction
20 because he will in all likelihood be sentenced to time served and
21 thus will not be able to file a petition while in "custody." The
22 court has already rejected this argument. Petitioner has had a
23 full and fair opportunity to challenge the judgment of conviction
24 in CR96P1581 in the state and federal courts and thus the dismissal
25 of this case will not deprive him of the opportunity to challenge
26 the judgment of conviction in CR96P1581.

27 Finally, petitioner argues that he is not being validly
28 detained because his life without parole sentence is not final; he

1 argues that a second amended judgment of conviction was entered in
2 that case and is currently on appeal. The court does not agree.
3 That petitioner is appealing the judgment of conviction in his
4 other case does not mean that he is being unlawfully detained in
5 that case -- now or at any point before now.

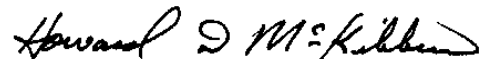
6 The court has further considered the arguments petitioner
7 has raised, with respect to whether they meet the standard for
8 issuance of a certificate of appealability, and concludes that
9 none does. Accordingly, petitioner's request for a certificate of
10 appealability will be denied.

11 In accordance with the foregoing, IT IS THEREFORE ORDERED
12 that petitioner's motion for rehearing and reconsideration (ECF
13 Nos. 11 & 12) is DENIED.

14 IT IS FURTHER ORDERED that petitioner's request for a
15 certificate of appealability is DENIED.

16 IT IS SO ORDERED.

17 DATED THIS 17th day of July, 2019.

18 

19 _____
20 HOWARD D. MCKIBBEN
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28